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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States Parties under articles 16 and 17 of the Covenant

Addendum

KENYA

[2 August 1993]

I. LEGAL FRAMEWORK FOR KENYA'S IMPLEMENTATION OF THE COVENANT

1. The International Covenant on Economic, Social and Cultural Rights entered into force for Kenya in January 1976. The provisions of various Acts of Parliament constitute the legal framework within which the rights recognized in the Covenant are implemented in Kenya. These legislative enactments include the following:

2. The Constitution. As the basic law of the land, the Constitution of Kenya is the foundation not only of the rights recognized in the Covenant, but also of all the rights and freedoms of the individual recognized by both international and municipal law. Chapter V of the Constitution provides for the protection of the fundamental rights and freedoms of the individual without which the rights envisaged in the Covenant would not be realized for the benefit of the individual.

3. For article 6 (the right to work):

(a) The Employment Act (Cap. 226);

(b) The Industrial Training Act (Cap. 237) - makes provision for the regulation of training of persons engaged in industry.

4. For article 7 (the right to favourable conditions of work):

(a) The Regulation of Wages and Conditions of Employment Act (Cap. 229) provides for the establishment of Wages Advisory Boards and Wages Councils for the regulation of remuneration and conditions of employment;

(b) The Radiation Protection Act (Cap. 243) makes provision for the protection of the public and radiation workers from the dangers arising from the use of devices or material capable of producing ionizing radiation;

(c) The Factories Act (Cap. 514) makes provision for the health, safety and welfare of persons employed in factories and other places;

(d) The Workman's Compensation Act (Cap. 236) makes provision for compensation to workmen for injuries suffered in the course of their employment.

5. For article 8 (the right to organize):

(a) The Trade Unions Act (Cap. 233) makes provision of employees' associations and organizations and for the registration and control of trade unions;

(b) The Trade Disputes Act (Cap. 234) makes provision for:

(i) Settlement of trade disputes generally;

(ii) Settlement of trade disputes in essential services;

(iii) Establishment of Boards of Inquiry and an Industrial Court;

(iv) Control and regulation of strikes and lockouts.

6. For article 9 (the right to social security):

(a) The National Social Security Fund Act (Cap. 258) establishes a National Social Security Fund and makes provision for contributions to and payment of benefits out of the Fund;

(b) The National Hospital Insurance Act (Cap. 255) establishes a National Hospital Insurance Fund and a National Hospital (Voluntary) Insurance Fund and provides for contributions to and the payment of benefits out of those Funds;

(c) The Local Authorities Provident Fund Act (Cap. 272) establishes a Provident Fund for certain employees of local authorities and provides for contributions to the Fund by the said employees and authorities and the administration of the Fund by a Local Authorities Provident Fund Board;

(d) The Provident Fund Act (Cap. 191) establishes a Provident Fund for certain employees of the Government and makes provision for contribution to the Fund by those employees and by the Government.

7. For article 10 (protection of the family, women and children):

(a) Children and Young Persons Act (Cap. 141) makes provision for the protection and discipline of children, juveniles and young persons;

(b) The Adoption Act (Cap. 143) makes provision for:

(i) The making and registration of adoption orders;

(ii) Regulation of arrangements for the adoption of children;

(iii) Restricting payments in connection with the adoption of children;

(c) The Guardianship of Infants Act (Cap. 144) makes provision for the guardianship and custody of infants;

(d) The Employment Act (Cap. 226) provides for maternity leave with full pay (Sect. 7 (2)).

8. For article 11 (the right to food, clothing and housing):

(a) The Housing Act (Cap. 117) provides for loans and grants of public money for the construction of dwellings and establishes a Housing Fund and a Housing Board;

(b) The Public Health Act (Cap. 242) makes provision for securing and maintaining public health;

(c) The Agriculture Act (Cap. 318) promotes and maintains a stable agriculture;

(d) The Crop Production and Livestock Act (Cap. 321) makes provision for the control and improvement of crop production and livestock, and the marketing and processing thereof.

9. For article 12 (the right to good health):

(a) The Public Health Act (Cap. 242) secures and maintains public health;

(b) The Factories Act (Cap. 514);

(c) The National Hospital Insurance Act (Cap. 225).

10. For articles 13 and 14 (the right to education):

(a) The Education Act (Cap. 211) provides for the regulation and progressive development of education;

(b) The Higher Education Loans Fund Act (Cap. 213) provides for the establishment and management of a fund to be used for making loans to assist students to obtain higher education at institutions within and outside Kenya;

(c) The Board of Adult Education Act (Cap. 223) establishes a Board of Adult Education to coordinate and promote activities in adult education in Kenya.

11. For article 15 (the right to cultural life and benefits of science):

(a) The Kenya Cultural Centre Act (Cap. 218) incorporates the Kenya Cultural Centre which provides for, among other things,

(i) The performance of music, drama and dancing, without any discrimination and for the exhibition of works of art and craft;

(ii) The holding of meetings to discuss matters of literary, historical, scientific or educational interest or importance;

(b) The Science and Technology Act (Cap. 250) establishes:

(i) A National Council for Science and Technology;

(ii) Advisory research committees;

(iii) Research Institutes.

II. MEASURES TAKEN BY THE GOVERNMENT TO PROMOTE THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Introduction

12. The improvement of the welfare of Kenyans is the priority responsibility of the Government. Since independence, the Government has endeavoured to promote political equality, religious freedom, social justice, freedom from ignorance, want and disease, human dignity including freedom of conscience and equal opportunity for all citizens.

13. The Government has provided essential services and basic needs such as education, health care, security, law and order, food and nutrition, water, shelter, etc. By ensuring peace and political stability, the Government has enabled Kenyans to help themselves individually and collectively thus improving their standard of living. The considerable progress achieved is also attributable to the pragmatic approach that has characterized the Government's policy formulation and implementation process.

14. This is reflected in the key policy documents that have provided the framework for our development strategy. These include Sessional Paper No. 10 of 1965 on African socialism and its application to planning in Kenya, the District Focus for Rural Development Strategy and Sessional Paper No. I of 1986 on economic management for renewed growth, which have been the basis for our development plans. These policies have gradually transformed the country from a largely rural economy based primarily on subsistence agriculture with a modicum of industrial and commercial activity at the time of independence to a mixed economy where the Government and the private sector both play an

important role to ensure a high rate of growth of incomes and equitable distribution thereof and also where indigenous Kenyans and non-nationals are free to participate in productive activities.

A. Food and nutrition

15. The objective of food security and self-sufficiency is paramount. Since independence production of major food items in Kenya has grown considerably even though in some cases, it has failed to keep pace with population growth. Various nutrition surveys have revealed that on average, both rural and urban populations receive adequate nutrients from the food they consume. This means that the acute malnutrition which was prevalent at independence is no longer a national problem.

16. The Government has established a Food and Nutrition Planning Unit whose major task is policy formulation, training and intervention programmes, assessment of nutritional impacts of agriculture and rural development projects, assessment of the nutritional status of target communities, establishment of a network for information exchange between the countries in the eastern and southern African region and the rest of the world.

17. The Government has also established a Drought Contingency Planning and Monitoring Mechanism capable of giving advance warning on impending difficulties in availability of food both at national and regional levels. This is in response to the frequent droughts that have occasionally threatened the nation's ability to feed itself, thereby necessitating the importation of food.

Constraints

18. There are many families who do not have sufficient food or those in which nutrient intake is below the required standard. In the case of the former, the problem is largely due to poverty. The problem of nutritional deficiency could be due to poverty or other contributory factors such as eating habits and poor environmental sanitation.

19. The increasing cost of agricultural inputs and prices of foodstuffs in general due to the effects of the implementation of the Structural Adjustment Programme has also affected the supply of food, especially in the rural areas.

B. Shelter

20. The Government's objective is to provide adequate shelter for all, both in rural and urban areas. The Government encourages cooperative housing schemes, mortgage lending and institutional housing programmes. The Government also provides housing for civil servants through the "pool housing" system in urban areas.

21. Within the public sector, housing development is organized through the Ministry of Public Works and Housing, the National Housing Corporation (NHC) and local authorities. The Government has also been involved in urban housing development jointly with foreign donor assistance.

22. The Government, by restricting its borrowing from the financial system, has enabled an increase in the pool of funds for housing finance institutions to be committed to housing development. The Government has allowed such institutions easier access to pension funds. It is also encouraging the development of a capital market where it will be possible to generate a secondary mortgage market through which financial assets can be bought and sold between investors.

Constraints

23. The rapid growth in the urban population has increased the demand for housing, which far outstrips supply. At the same time, the scarcity of land in urban areas is contributing to the increasing costs. This has adversely affected the initiative on the part of individuals and private developers to invest more in housing. The obvious result is inadequate housing for the middle- and low-income groups as well as the poor people. This has also contributed to the creation of slums.

24. The Government is in the process of reviewing a number of regulations and building codes which have become a major obstacle to rapid housing development in the country.

C. Health

25. Kenya has achieved tremendous progress in the provision of health for all. The Government's efforts in this field have focused on increasing coverage and accessibility of health services, particularly in the rural areas, improving the curative, preventive and promotional aspects of health care, training of medical and paramedical personnel, etc. As a result, life expectancy today is above 55 years compared to 40 years at independence. Infant mortality has dropped by more than 30 per cent.

26. The Government pays special attention to maternal and child health care. In this regard, a child survival programme has been established. This programme covers pre-natal and post-natal health care. In the case of the latter, infant immunization, education on the proper use of oral rehydration salts and nutrition monitoring are emphasized. A specific intervention programme is also in place to cater for high-risk target groups. Family planning methods to help in child spacing and improve the health of mothers and their offspring are also included in the programme.

27. The Government also runs a health insurance programme for civil servants. This is managed through the National Hospital Insurance Fund (NHIF). The scheme has been beneficial to Kenyans in the public service but there are shortcomings due to low contributions and daily rates which can no longer cover the cost of hospitalization. Moreover, its coverage in rural areas is minimal. In addition to the insurance scheme the Government maintains an ex-gratia payment scheme for in-patients.

28. The Government has expanded its efforts in the area of environmental health. The focus of its attention is supply of clean water and sanitation, protection from environmental pollution and food contamination, control of

vector-borne diseases, especially malaria, bilharzia and sleeping sickness, control of sexually transmitted diseases, particularly AIDS which has assumed serious proportions and is most dangerous since as yet it has no known cure.

29. In the area of traditional medicine, it is recognized that a large number of Kenyans continue to depend on traditional medicine for their cure. However, because of lack of information on its effectiveness, drug quality and safety, traditional medicine and its potential contribution to health has been viewed with a lot of scepticism. The Government has, however, encouraged the formation of professional associations for traditional medicine practitioners to facilitate getting necessary information to increase the general awareness of the effectiveness of this form of medicine and possibly make it become part and parcel of formal medical research and the primary health care programme.

30. The provision of health services has largely been the responsibility of the public sector. Because of the increasing financial burden, the Government is in the process of reviewing its strategy in this sector. While the Government will continue in its efforts to promote health awareness, it is reordering its priorities between the promotive, preventive, curative and rehabilitative aspects of health care. The Government is also encouraging a greater role to be played by the community through private sector, self-help and non-governmental organizations to complement its efforts. The Government is also laying emphasis in the integration of basic services such as education, training, water and sanitation and distribution of basic foodstuffs by other Government ministries and agencies into the overall health strategy.

Constraints

31. The provision of health services is still inadequate in the country. The main reason is the pressure on public sector financial resources not only for expanding health services and facilities but also to respond to the increasing demands for the large population growth rate. This has meant that serious underfunding in certain key areas is inevitable and has reduced the efficiency of the health care delivery system.

32. Difficult geographical conditions and low community participation in some areas, especially the arid and semi-arid areas, has led to inequitable distribution of health services.

33. There is a shortage of manpower and management expertise for running the health services, along with a lack of proper public information and education on primary health care.

D. Education

34. The Government is committed to providing equal educational opportunities for all through the provision of free primary education and the production of skilled manpower to meet the growing and changing demands of the country.

35. Since independence, Kenya has witnessed a rapid growth in the number of schools and in the level of enrolment. There has also been a considerable improvement in the sex ratio in school enrolment. The ratio of boys to girls in primary schools is today at par. This is mainly due to the large

government expenditure and the elimination of discrimination in the education system. The high demand from Kenyans for education has also been a contributory factor.

36. The Government also encourages adult education as part of its campaign to eradicate illiteracy and to provide knowledge, skills and attitudes needed to participate more meaningfully in society.

37. Because of the increasing claim of the education sector on national resources, the Government has introduced cost-sharing to ease the burden on the budget. While the Government will continue to finance general administration and professional services, parents and beneficiaries of education and training will be expected to take up costs relating to development and provision of education facilities, equipment and personnel.

Constraints

38. The most critical issue facing this sector is the financing of education from the public sector. Over 35 per cent of the total public sector recurrent budget is taken up by this sector. This figures approaches 40 per cent of training activities of youth polytechnics, the National Youth Service, the Directorate of Industrial Training and the Directorate of Personnel Training are taken into account.

39. The demand for education is so high in Kenya that facilities and staff are overstretched. This is a matter of great concern to the Government.

40. In some nomadic areas the Government is having to put extra effort to encourage children to go to school.

E. Employment

41. The need to create employment opportunities for all Kenyans is a priority of the Government. The Government has taken several steps to address this issue. In 1973 the Government published Sessional Paper No. 10 of 1973 on employment following a study undertaken jointly with ILO and UNDP. This was updated in 1985 whereby the problem of employment was put in its long-term perspective. Despite the Government's effort to alleviate unemployment, it remains a serious problem. The level at which jobs can be created depends on the rate of economic growth and development. This in turn is partly affected by external factors such as world recession, inflation and contraction in the inflow of external investable resources.

42. The Government recognizes that rapid growth and hence employment expansion still largely depends on internal factors. Government measures are therefore aimed at providing incentives for increased investments in the economy to generate employment opportunities. In the rural areas, the emphasis is on increased productivity through provision of credit. In the urban areas, emphasis is on existing capacity to raise productivity. The Government is also encouraging growth in the informal sector as well as self-employment by promoting the use of appropriate technology and expansion of marketing opportunities for the sector.

43. Since independence, the public sector remained the largest employer. However, because of budgetary constraints and also in order to make the public service lean and efficient, the Government is in the process of slowing down the rate of employment in this sector.

Constraints

44. The biggest constraint in the generation of employment opportunities is the population explosion. The rapid growth of the population, now estimated at 27.2 million, has had implications for the Government's ability to provide basic needs in the short run, while in the long run it has meant heavy pressures on the economy which are likely to induce major structural and social changes.

45. The overall performance of the economy is also a major constraint. In recent years, the Kenyan economy, like that of the rest of sub-Saharan Africa, has performed poorly. Economic growth has lagged behind population growth.

F. Women and development

46. The Government recognizes the important role of women in Kenyan society, particularly their role as agricultural producers and suppliers of welfare services at the household and community levels.

47. The Government has been working towards the restoration of women in their active role, not only in the development of the economy but also in the ownership and control of wealth arising from the production process.

48. Women's quality of life, as measured by such indicators as education, health, urbanization, employment and income, has improved considerably since independence.

Constraints

49. Several factors continue to prevent women from upgrading their situation to prominent well-paying positions with better working conditions. These include cultural attitudes among some communities which discriminate against women. The dropout rate for girls from schools resulting from social or biological factors also remains a problem.

G. Culture

50. The Government has taken measures that will enhance the preservation and development of Kenyan culture through the following programmes:

(a) Cultural centres to act as focal points for cultural expression, especially in rural areas;

(b) Development and promotion of Kiswahili as a national language;

(c) Maintenance of the role of elders in public decision-making in such matters as land, marital relations and extended family relationships;

(d) Intercultural exposure through educational material;

(e) Promotion of national culture through songs, dance, mime, oral and printed traditional literature;

(f) Preservation of monuments, structures of cultural interest and expansion of museums in each provincial centre;

(g) Promotion of Kenyan authorship and publishing, etc.

Constraints

51. The rapid cultural and social transformations in Kenya have had diverse impacts on Kenyan society. Acceptance of modern living standards, interaction with the outside world through the various media and through tourism and technological innovations have inevitably led to the abandonment of some facets of our most cherished cultural heritage, sometimes leading to serious social dislocations; for instance, the spirit of African socialism and attendant mutual social responsibility is threatened by increasing individualism and self-centredness.

52. In 1992, Kenya experienced events of historic importance. Dramatic political reforms resulted in the reintroduction of multi-party politics. Economic reforms led to the further liberalization of the economy across the board. While no one doubts the benefits of these reforms in the long run, in the short run they have been accompanied by political, social and economic uncertainty which has had an adverse effect on the country in general.

53. The Government is, however, committed to the protection of the general welfare of Kenyans and especially the disadvantaged such as the poor, the disabled, women, children and other vulnerable groups. The Government has, therefore, devised programmes and strategies covering the priority areas of food, security, water, energy, health and basic education to counteract the adverse effects and to provide safety nets for these vulnerable groups.